

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

LARRY W. ASHWORTH	*	CIVIL ACTION NO. 2:20-CV-00053
	*	
VERSUS	*	JUDGE JAMES D. CAIN, JR.
	*	
INTERNATIONAL PAPER COMPANY,	*	MAGISTRATE JUDGE KATHLEEN KAY
ET AL	*	

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**INTERNATIONAL PAPER COMPANY’S MOTION FOR LEAVE TO FILE A SUR-  
REPLY MEMORANDUM IN RESPONSE TO PLAINTIFF’S REPLY MEMORANDUM  
IN FURTHER SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF  
SETTLEMENT**

NOW INTO COURT through undersigned counsel comes Defendant, International Paper Company (“IP”), who respectfully moves this Honorable Court for an Order granting leave to file a Sur-Reply Memorandum in Response to Plaintiff’s Reply Memorandum in Further Support of Motion for Preliminary Approval of Settlement (ECF 128-2) for the following reasons:

On September 5, 2023, Plaintiff filed his Motion for Preliminary Approval of Settlement (“Motion”) (ECF 105). On September 21, 2023, IP and BNSF Railway Company (“BNSF”) filed an Opposition to the Motion (“Opposition”) (ECF 122). On September 28, 2023 Plaintiff filed a Reply Memorandum in Further Support of the Motion (“Reply”) (ECF 128-2).

Plaintiff’s Reply contains *25 pages of new content*. The Court should strike Plaintiff’s Reply Memorandum because it flouts bedrock Fifth Circuit (if not universal) precedent prohibiting the raising of new arguments for the first time in a reply. *E.g., Thompson v. Link*, 2022 WL 175547 (5<sup>th</sup> Cir. Jan. 15, 2022). At the very minimum, the Court should grant IP an adequate opportunity to respond to Plaintiff’s new arguments by accepting IP’s Sur-Reply attached hereto. *Redhawk Holdings Corp. v. Schrieber*, 836 F. App’x 232, 235 (5th Cir. 2020).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all known counsel of record. A copy has also been served on all known counsel of record and/or any unrepresented party not enrolled in the CM/ECF system by U.S. Mail, certified mail, fax, e-mail, and/or hand delivery.

/s/ Chelsea G. Favret